

8/30/83

SEP 14 1983

Dear Applicant:

Your application for recognition of ~~exemption~~ from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code has been considered.

The information submitted discloses that you were incorporated under the laws of the State of [REDACTED] on [REDACTED].

Your purposes are:

"....exclusively for charitable and educational purposes, including, for such purposes the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code of 1953...."

Your activities are to provide counseling to individuals with personal problems. You also make available a facility for conferences, board meetings of organizations and for visiting ministers, evangelists or speakers at local churches.

Your support is from contributions.

Your organization is not open to membership and is controlled and operated by its officers and the Board of Directors consisting of three persons.

On [REDACTED], the organization entered into a lease agreement with its incorporators and officers, [REDACTED]. The rental terms of the contract are for \$[REDACTED] per month, or \$[REDACTED] per year and must be paid in full for the current year by December 31st. To support this rental contract the organization provided an independent appraisal for the contract amount.

The organization established the criteria of the facility based on privacy. Your selection was based on the fact that it permitted unobserved movement by clients and for an atmosphere of privacy.

The reconstructed records of the facility usage show that during the first corporate year it was utilized █% of the time.

The organization used █% of its income in the first corporate year for rent, yard maintenance and repairs for the facility it rented.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

- "(3) Corporations, *** fund, or foundation, organized and operated exclusively for religious, charitable, scientific, *** literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

- "(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

- "(a)(2) The term "exempt purpose or purposes," as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section.

- "(c)(2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals."

In Benedict Ginsberg, 46 T.C. 47 (1966) a nonprofit corporation was formed to dredge a navigable waterway fronting the property of its members. This waterway was little used by the general public but its navigability greatly affected the value of member's properties. Also

evidence showed that the "contributions" come solely from members and were proportionable to the value of their property. Based on these facts, it was held that the corporation was not charitable, but was serving private purposes.

In Better Business Bureau of Washington D.C. Inc. v. United States, 326 U.S. 279 (1945) the Supreme Court held that a better business bureau was not exclusively educational or charitable. Its activities were in part aimed at promoting the prosperity and standing of the business community, even though there was also benefit to the public. This constituted substantial private benefit that precluded exemption.

In John Marshall Law School v. U.S., 81-2 U.S.T.C. 9514 (ct. cl. 1981) the court found that the commissioner acted properly in revoking exemption under 501(c)(3) on the grounds of inurement to the controlling officers and their families. The inurement included, but was not limited to, payments to the families as follows: automobile, education and travel expenses, insurance policies, basketball and hockey tickets, interest-free loans, home repairs and personal household furnishings.

Although, you have attempted to show a benefit to the general public it is not exclusive in nature so as to preclude exemption. By renting your facility from your incorporators and officers you are providing a private benefit. So then, as cited in Regulations 1.501(c)(3)-(b) and the Better Business Bureau of Washington D.C. Inc., a 501(c)(3) organization must be organized and operated exclusively for 501(c)(3) purposes.

Accordingly, it is held that you are not entitled to exemption from Federal income tax under section 501(c)(3) of the Code, and you are required to file income tax returns on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7426(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

[REDACTED]

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely yours,

[REDACTED]
District Director

Enclosures:
Publication 892
Form 6018